

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SAFECO INSURANCE COMPANY OF  
AMERICA,

Plaintiff,

v.

RIP VAN 899, LLC, *et al.*,

Defendants.

Case No. 2:23-cv-01417-ART-NJK

ORDER PARTIALLY GRANTING  
MOTION FOR JUDGMENT ON THE  
PLEADINGS

Plaintiff and Counter-Defendant Safeco Insurance Company of America (Safeco) brings this suit against Defendant and Counter-Plaintiff Rip Van 899, LLC (Rip Van), seeking a declaration that it is not required to provide for representation of Rip Van in an ongoing state court tort litigation. Rip Van brings counter claims alleging that Safeco acted unfairly in its handling of a Landlord Insurance Policy under which Rip Van claims coverage.

Before the Court is Safeco's motion for judgment on the pleadings. (ECF No. 27.) The Court grants that motion in part and denies it in part, for the reasons identified below.

**I. BACKGROUND**

Rip Van is an LLC wholly owned and operated by Dooley Tu. (ECF Nos. 1 at ¶ 4; 14 at ¶ 7.) Rip Van owns a property at 2913 Black Forest Dr., in Las Vegas, NV (the Black Forest Property). (ECF No. 14 at ¶ 14.) Tu is not named on any ownership documents related to the property and has not held herself out as an owner of that property. (*Id.* at ¶ 18.) In February 2020, Rip Van rented the Black Forest Property to Tania Guzman. (ECF Nos. 1 at ¶ 17; 14 at ¶ 19.) Unbeknownst to Van and Tu, Guzman began operating a business out of the property, called Compassionate Heart Services (CHS). (ECF No. 14 at ¶ 20.) CHS is alleged to be a "halfway house" for people who have been discharged from mental health facilities. (*Id.*) On December 31, 2020, a patient of CHS, Christopher Brown,

1 drowned in a pool located at the Black Forest property. (*Id.* at ¶ 22.) On July 12,  
 2 2022, Brown’s estate brought claims in state court against Guzman, CHS, and  
 3 Rip Van alleging nine causes of action, including negligence and wrongful death.  
 4 (ECF No. 1-1.) Tu was later named as a defendant. (ECF No. 27 at 4 n.4.)

5 Safeco and Tu are parties to a “Landlord Insurance Policy” that provides  
 6 premises liability coverage for the Black Forest Property. (ECF No. 1-2 at 11.) Rip  
 7 Van is not a named party to that contract, even though it owns the property  
 8 covered by the contract and is, for all intents and purposes, the sole landlord of  
 9 the property. (*Id.*)

10 On September 11, 2023, Safeco brought litigation in this court, naming Rip  
 11 Van and the estate of Christopher Brown as defendants and seeking a declaration  
 12 that the Landlord Policy does not require it to represent Rip Van in the underlying  
 13 state court litigation.<sup>1</sup> (ECF No. 1.) Rip Van then brought counterclaims against  
 14 Safeco and others, alleging 10 causes of action: (1) Breach of Contract; (2) Breach  
 15 of the Implied Covenant of Good Faith and Fair Dealing; (3) Unjust Enrichment;  
 16 (4) Negligent Misrepresentation; (5) Bad Faith; (6) Breach of Fiduciary Duty; (7)  
 17 Civil Conspiracy; (8) Equitable Estoppel; (9) Declaratory Relief; (10) Respondeat  
 18 Superior. (ECF No. 14 at ¶¶ 29-93.)

## 19 **II. LEGAL STANDARD**

20 Parties to federal litigation are entitled to seek judgment on the pleadings  
 21 pursuant to Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings is  
 22 “functionally identical” to a motion to dismiss for failure to state a claim under  
 23 Fed. R. Civ. P. 12(b)(6). *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192  
 24 (9th Cir. 1989). Thus, “[i]n reviewing a motion for judgment on the pleadings  
 25 pursuant to Rule 12(c), the court ‘must accept all factual allegations in the  
 26 complaint [and counterclaims] as true and construe them in the light most

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27  
 28 <sup>1</sup> Safeco does not dispute that it is required to represent Tu, since her name is on the contract. (ECF No. 27 at 4 n.4.)

1 favorable to the non-moving party.” *Lopez v. Nat’l Archives & Records Admin.*,  
2 301 F. Supp. 3d 78, 83 n.6 (D.D.C. 2018) (quoting *Fleming v. Pickard*, 581 F.3d  
3 922, 925 (9th Cir. 2009)). “[J]udgment on the pleadings is proper when, taking  
4 all the allegations in the non-moving party’s pleadings as true, the moving party  
5 is entitled to judgment as a matter of law.” *Id.* (quoting *Ventress v. Japan Airlines*,  
6 486 F.3d 1111, 1114 (9th Cir. 2007)). To survive a motion for judgment on the  
7 pleadings, a claimant’s complaint must give fair notice of a legally cognizable  
8 claim and the grounds on which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
9 555 (2007). “A formulaic recitation of a cause of action with conclusory  
10 allegations is not sufficient; a plaintiff must plead facts showing that a violation  
11 is plausible, not just possible.” *Insco v. Aetna Health & Life Ins. Co.*, 673 F. Supp.  
12 2d 1180, 1185 (D. Nev. 2009) (citing *Ashcroft v. Iqbal*, 559 U.S. 662, 678 (2009)).

### 13 **III. DISCUSSION**

14 Safeco makes three sets of arguments in its motion. First, it argues that  
15 the Landlord Policy does not cover Rip Van. This issue is potentially dispositive  
16 of Safeco’s claim for declaratory judgment and Rip Van’s counterclaims for breach  
17 of contract (Claim 1), breach of the implied covenant (Claim 2), bad faith (Claim  
18 5), and declaratory relief (Claim 9). Second, Safeco argues that, even if the  
19 Landlord Policy covers Rip Van, Rip Van cannot be said to have acted in bad faith.  
20 This issue is potentially dispositive of Rip Van’s counterclaims for breach of the  
21 implied covenant (Claim 2) and bad faith (Claim 5). Finally, Safeco argues that  
22 none of Rip Van’s remaining counterclaims are cognizable under Nevada Law or  
23 that Rip Van has failed to properly state those claims. This issue is potentially  
24 dispositive of Rip Van’s remaining claims, which include unjust enrichment  
25 (Claim 3), negligent misrepresentation (Claim 4), breach of fiduciary duty (Claim  
26 6), civil conspiracy (Claim 7), equitable estoppel (Claim 8), and respondeat  
27 superior (Claim 10).

#### 28 **A. COVERAGE UNDER THE CONTRACT**

1 Safeco makes two arguments for why the Landlord Policy does not cover  
2 Rip Van. First, it argues that the Policy only covers parties named in the contract,  
3 and Rip Van is not a named party. Second, it argues that, even if Rip Van were a  
4 named party, the contract's exception for damages related to the provision of  
5 "professional services" would bar Rip Van from asserting coverage.

### 6 **1. Named Parties**

7 Safeco is correct that the Landlord Policy does not cover Rip Van, on its  
8 face. The Policy provides premises liability coverage only to the "insured." (ECF  
9 No. 5-2 at 31.) The Policy defines "insured" as (1) the named insured shown in  
10 the policy's declarations; (2) their relatives residing in their home; (3) persons  
11 under the age of 21 who are under the care of either of the above. (*Id.* at 36  
12 (defining "insured"), 29 (defining "you").) It is uncontested Rip Van does not fall  
13 into any of these categories.

14 Even though Rip Van is not entitled to coverage on the face of the Landlord  
15 Policy, it has alleged facts that, if true, would entitle it to reformation of the Policy  
16 under the doctrine articulated in *Nolm, LLC v. County of Clark*. 100 P.3d 658,  
17 661-63 (Nev. 2004). In that case, the Nevada Supreme Court held that  
18 reformation was an appropriate remedy where one party had made a unilateral  
19 mistake as to a central provision of a contract, that mistake was not the result of  
20 gross negligence, and the non-mistaken party knew of the mistake and failed to  
21 disclose it. *Id.* The court held that it was irrelevant which party bore the risk of  
22 mistake. *Id.* at 740.

23 Here, Rip Van alleges that it and Tu intended Rip Van to be the named  
24 party on the Policy and that Safeco knew of their intention and purposefully left  
25 Tu as the named insured. (ECF No. 14 at ¶¶ 16, 78.) To support this allegation,  
26 Rip Van alleges that (1) the Policy refers to itself as a "Landlord Policy" (ECF No.  
27 5-2 at 3); (2) Rip Van is the sole owner and landlord of the property in question,  
28 and Safeco knew this fact (ECF No. 14 at ¶ 18); (3) insurance companies like

1 Safeco have a practice when selling landlord policies of confirming that the  
2 insured actually owns the covered property (*id.* at ¶ 14); (4) Payne and Legacy  
3 were agents of Safeco (*id.* at ¶ 90); (5) Payne and Legacy were specifically  
4 instructed to buy a policy that would insure the property in question (*id.* at ¶¶  
5 11-13, 15-16).

6 Read in a light most favorable to Rip Van, its alleged unilateral mistake was  
7 not a result of gross negligence. *See Nolm*, 100 P.3d at 662 (finding no gross  
8 negligence when county plaintiff inadvertently sold a larger parcel of land than it  
9 intended because “the sale was the result of multiple County departments  
10 attempting to coordinate their respective duties, the County departments were in  
11 a period of flux and the sale of the remnant parcels was assigned to a division  
12 that had never before conducted such sales”); *see also Hart v. Kline*, 116 P.2d  
13 672, 674 (Nev. 1941) (defining gross negligence as “substantially and appreciably  
14 higher in magnitude and more culpable than ordinary negligence” and  
15 “equivalent to the failure to exercise even a slight degree of care”). Further, Rip  
16 Van’s allegations are sufficient to support a claim for reformation under Nevada  
17 law.

## 18 **2. Professional Services Exception**

19 Safeco next argues that, even if Rip Van were covered under the Landlord  
20 Policy, the policy’s “professional services” exception would bar coverage in this  
21 case.

22 The professional services exception states that Safeco will not provide  
23 liability coverage for “bodily injury or property damage . . . arising out of the  
24 rendering or failing to render professional services.” (ECF No. 5 at ¶ 32.)  
25 “Professional services” is not defined in the contract, and the parties disagree  
26 about whether the accident in question (Christopher Brown drowning at the  
27 Black Forest Property while arguably under Guzman and CHS’s care) constituted  
28 a “fail[ure] to render professional services.”

1 Safeco is not entitled to judgment on this issue. Even if the Court were to  
 2 hold that the phrase “fail[ure] to render professional services” is unambiguous  
 3 and to adopt Safeco’s definition of professional services as “an[y] activity done for  
 4 remuneration,” a reasonable juror could conclude that Christopher Brown’s  
 5 death did not arise out of a failure to render professional services. (ECF No. 35 at  
 6 6 (citing *Blue Ridge Ins. Co. v. Jacobsen*, No. 98-55052, 1999 WL 1073821 (9th  
 7 Cir. 1999)).) There is a discrepancy in the pleadings as to whether CHS was a  
 8 halfway house or something closer to a medical establishment. (*Compare* ECF No.  
 9 5 at ¶ 20 (“Guzman did not inform Apex that she ran a medical services facility”)  
 10 with ECF No. 14 at ¶ 20 (“Guzman used the property as a halfway house . . .”).)  
 11 The Court must assume it was a halfway house for purposes of this motion, since  
 12 that assumption would seem to impose fewer “professional” duties on Guzman  
 13 and CHS. *Fleming*, 581 F.3d at 925. Given this, the Court concludes that Guzman  
 14 and CHS’s range of “professional services” may not have extended to the sort of  
 15 poolside supervision that the state tort plaintiffs allege could have prevented  
 16 Christopher Brown from drowning.

### 17 **B. BAD FAITH**

18 Safeco gives three reasons why Rip Van’s “bad faith” counterclaims should  
 19 be dismissed.

20 First, Safeco argues that Rip Van cannot state a claim for bad faith or  
 21 breach of the implied covenant of good faith and fair dealing because Rip Van has  
 22 not alleged that a valid contract exists between itself and Safeco. That argument  
 23 fails because, as explained above, it is impossible to say at this time that there is  
 24 no contract between Rip Van and Safeco as a matter of law.

25 Safeco next argues that Rip Van has failed to allege a denial of coverage in  
 26 support of its bad faith claim. Nevada law does not require Rip Van to make such  
 27 an allegation. The Nevada Supreme Court held in *Guaranty Nat. Ins. Co. v. Potter*  
 28 that an insurer could be held liable on a claim for “bad faith,” even when it was

1 uncontested that the insurer had not denied coverage. 912 P.2d 267, 272 (Nev.  
2 1996).

3 Finally, Safeco suggests that it should not be held liable for either of Rip  
4 Van's "bad faith" counterclaims because it has acted fairly in its coverage  
5 determination proceedings and has therefore complied with its tort and contract  
6 "good faith" obligations as a matter of law.

7 This argument fails as well. Rip Van alleges that Safeco is attempting to  
8 deny coverage with no reasonable basis for doing so and with knowledge that it  
9 has no reasonable basis for doing so. (ECF No. 14 at ¶¶ 60-61.) This is sufficient  
10 to survive a 12(c) motion. *Guaranty*, 912 P.2d at 272 ("Bad faith is established  
11 where the insurer acts unreasonably and with knowledge that there is no  
12 reasonable basis for its conduct.").

### 13 **C. REMAINING CLAIMS**

14 Finally, Safeco argues that the Court must dismiss Rip Van's remaining  
15 claims because (1) they are not available as a matter of law or (2) they have not  
16 been pled with requisite plausible facts. The claims in question are Unjust  
17 Enrichment (Claim 3); Negligent Misrepresentation (Claim 4); Breach of Fiduciary  
18 Duty (Claim 6); Civil Conspiracy (Claim 7); Equitable Estoppel (Claim 8);  
19 Respondeat Superior (Claim 10).

#### 20 **1. Unjust Enrichment**

21 In Nevada, unjust enrichment requires a showing that (1) the plaintiff  
22 conferred a benefit on defendant; (2) the defendant appreciated that benefit; (3)  
23 the defendant accepted and retained the benefit under circumstances such that  
24 it would be inequitable for him to retain the benefit without payment of the value  
25 thereof. *Unionamerica Mortg. and Equity Trust v. McDonald*, 626 P.2d 1272, 1273  
26 (Nev. 1981). Unjust enrichment cannot be alleged when there is an existing valid  
27 contract between the parties. *Lipshie v. Tracy Investment Co.*, 566 P.2d 819, 824  
28 (1977) ("To permit recovery by [unjust enrichment] where a written agreement



1 exists would constitute a subversion of contractual principles.”)

2 Safeco argues that Rip Van cannot allege unjust enrichment while  
3 simultaneously alleging the existence of a valid contract. Safeco is mistaken. Rip  
4 Van is entitled to plead its unjust enrichment claim in the alternative, and it has  
5 done so here. Fed. R. Civ. P. 8(e); *Molsbergen v. U.S.*, 757 F.2d 1016, 1019 (9th  
6 Cir. 1985).

7 Furthermore, Rip Van alleges facts sufficient to support a claim for unjust  
8 enrichment, since Rip Van alleges that it conferred a benefit on Safeco in the form  
9 of regular insurance payments, that Safeco appreciated that benefit, and that it  
10 accepted and retained that benefit without providing Rip Van anything in return,  
11 such as insurance coverage. See *Unionamerica Mortg. and Equity Trust v.*  
12 *McDonald*, 626 P.2d 1272, 1273 (Nev. 1981).

## 13 **2. Negligent Misrepresentation**

14 Safeco argues that Rip Van’s negligent misrepresentation must be  
15 dismissed because negligence claims are not available to an insured against its  
16 insurer. It specifically argues that Nevada law already imposes duties of care on  
17 insurers through contract law, the tort of bad faith, and the implied covenant of  
18 good faith and fair dealing and that the existence of a duty of care sounding in  
19 negligence would undermine those existing duties.

20 The Court holds that Nevada law recognizes a claim for negligent  
21 misrepresentation against an insurance company in some cases and that Rip Van  
22 has alleged facts sufficient to support that claim here.

23 Since the Nevada Supreme Court has never directly addressed the issue of  
24 whether a claim for negligent misrepresentation can be sustained against an  
25 insurance company by an insured, the Court must resolve this issue as it expects  
26 a Nevada Court would. *Hayes v. Cnty. of San Diego*, 658 F.3d 867, 871 (9th Cir.  
27 2011).

28 Nevada recognizes claims for negligent misrepresentation in non-insurance



1 cases. *Barmettler v. Reno Air, Inc.*, 956 P.2d 11381 (Nev. 1998).

2 Nevada courts have also held insurers to have duties towards their insured,  
3 outside of the duty supplied by the tort of bad faith, that sound in tort law. For  
4 example, in *Grand Hotel Gift Shop v. Granite State Ins. Co.*, the Nevada Supreme  
5 Court acknowledged that an insurer may sometimes be liable to an insured based  
6 on its failure to properly train or supervise its employees. 839 P.2d 599, 603 (Nev.  
7 1992). In the same order, the Nevada Supreme Court considered the viability of  
8 a simple negligence claim against an insurance company. *Id.* While the court  
9 ultimately upheld the lower court's decision to bar evidence of the insurer's  
10 negligence at trial, it did so because the plaintiff had not put the defendant on  
11 notice of its negligence claim. *Id.* at 603-04. The court gave no indication that  
12 negligence claims are unavailable against insurers as a matter of law.

13 Some courts outside of Nevada have held that the tort of bad faith bars  
14 some negligence claims, but the opinions of those courts are not binding on this  
15 one, and their holdings are inapposite. The U.S. District Court for the District of  
16 Nevada and the California Court of Appeals, for example, have both held  
17 negligence claims to be barred when a plaintiff alleges negligence related to the  
18 processing of an insurance claim. *Phillips v. Clark County School Dist.*, 903 F.  
19 Supp. 2d 1094, 1104 (D. Nev. 2012) (holding the duty of good faith barred  
20 plaintiff's independent claim that insurer was negligent in its denial of his  
21 insurance claim); *Sierzega v. Country Preferred Ins. Co.*, No. 2:13-CV-1267 JCM-  
22 NJK, 2014 WL 1668630 at \*5 (D. Nev. 2014) (same, for plaintiff's claim that  
23 defendant had negligently delayed his policy payment); *Adelman v. Associated*  
24 *Intern. Ins. Co.*, 90 Cal. App. 4th 352, 356 (Cal. Ct. App. 2001) (holding that "an  
25 insured can recover in tort against an insurer *for the improper handling of a claim*  
26 *only upon a showing that the insurer acted in bad faith . . . such a showing*  
27 *requires something more than simple negligence.*") (emphasis added). It makes  
28 sense that the tort of bad faith would bar negligence claims in such cases, since

1 bad faith already supplies a duty of care in the processing of insurance claims  
2 that is “something more than simple negligence.” *Adelman*, 90 Cal. App. 4th at  
3 356; *see also Guaranty Nat. Ins. Co. v. Potter*, 912 P.2d 267, 272 (Nev. 1996)  
4 (acknowledging that bad faith has typically only applied to cases of “unreasonable  
5 denial or delay in payment of a valid claim” but holding that it can also apply to  
6 situations where an insurer acted wrongfully while processing and ultimately  
7 *granting* a claim for coverage). But Rip Van does not allege negligent  
8 misrepresentation in the processing of its insurance claim. (See ECF No. 14 at ¶¶  
9 52-53.) Rather, it alleges that Safeco negligently misrepresented the scope of its  
10 Landlord Policy, when that policy was first entered. (*Id.*) Such allegations are not  
11 barred by the tort of bad faith.

12 Because Nevada allows for negligent misrepresentation claims in other  
13 contexts, such a claim is not barred here, and Nevada courts have held insurers  
14 to have duties towards their insured that sound in tort law, this Court holds  
15 Safeco to be susceptible to a claim for negligent misrepresentation, on the facts  
16 alleged.

### 17 **3. Breach of Fiduciary Duty**

18 Safeco argues there is no independent cause of action for breach of  
19 fiduciary duty in an insurer/insured relationship, under Nevada law. Safeco is  
20 correct. The Nevada Supreme has never acknowledged that a claim for breach of  
21 fiduciary duty by an insured against an insurer. And, in *Powers v. United Services*  
22 *Auto. Ass’n*, the court explicitly declined to hold that such a claim exists. 962  
23 P.2d 596, 603 (Nev. 1998) (“We are not adopting a new cause of action based on  
24 an insurance company’s failure to put its insured’s interests above its own; we  
25 are merely recognizing that breach of the fiduciary nature of the insurer-insured  
26 relationship is part of the duty of good faith and fair dealing.”); *Strabala v. State*  
27 *Farm Fire & Cas. Ins. Co.*, 124 F. App’x 517, 518 (9th Cir. 2005) (“The district  
28 court was . . . correct in finding that Nevada law does not recognize an

1 independent claim for breach of fiduciary duty against an insurer.”); *Walker v.*  
 2 *State Farm Mut. Aut. Ins. Co.*, 259 F. Supp. 3d 1139, 1150 (D. Nev. 2017) (holding  
 3 that “breach of fiduciary duty is not a cognizable claim against an insurer”).

4 Rip Van’s counterclaim for breach of fiduciary duty is dismissed, with  
 5 prejudice.

#### 6 **4. Civil Conspiracy**

7 Safeco argues that Nevada’s tortious bad faith cause of action bars claims  
 8 for civil conspiracy against insurers for the same reasons it bars claims for  
 9 negligent misrepresentation. The Court disagrees for the same reasons it holds  
 10 that claims of negligent misrepresentation can sometimes be brought against  
 11 insurers. To the extent that Rip Van alleges a civil conspiracy that does not  
 12 challenge actions related to Safeco’s handling of its insurance claim, that civil  
 13 conspiracy claim survives Safeco’s motion.

14 Rip Van alleges specifically that Safeco, Payne, and Legacy conspired to  
 15 unlawfully avoid naming Rip Van as an insured under the Policy, despite their  
 16 knowledge that Rip Van was the owner of the Las Vegas property, and that this  
 17 directly and proximately caused harm to Rip Van. (ECF No. 14 at ¶¶ 71-74.) This  
 18 is sufficient to survive a 12(c) motion. *See Guilfoyle v. Olde Monmouth Stock*  
 19 *Transfer Co., Inc.*, 335 P.3d 190, 198 (Nev. 2014).

#### 20 **5. Equitable Estoppel**

21 Safeco agrees that equitable estoppel can be a valid claim by an insured  
 22 against its insurer. It argues only that Rip Van has failed to state a claim for  
 23 equitable estoppel here.

24 In Nevada, estoppel requires that:

25 (1) [Safeco] must be apprised of the true facts;

26 (2) [Safeco] must intend that [its] conduct be acted upon, or must so act  
 27 that [Rip Van] has the right to believe it was so intended;

28 (3) [Rip Van] must be ignorant of the true state of facts; and

(4) [Rip Van] must have relied to [its] detriment on the conduct of [Safeco]. *Chequer, Inc. v. Painters and Decorators Joint Committee, Inc.*, 655 P.2d 996, 998-99 (Nev. 1982). Both sides agree that the first two elements have been satisfied; Safeco argues that elements three and four are lacking. The Court holds that Rip Van has satisfied both of those elements.

Rip Van alleges that it was unaware that the Landlord Policy did not cover it. (ECF No. 14 at ¶¶ 13, 15.) It supports this allegation with allegations that Tu communicated her intent that Rip Van be covered by the Landlord Policy and that Tu received a “Landlord Policy” that covered the property in question, of which Rip Van was the sole owner. (*Id.* at ¶ 11; ECF No. 5-2 at 3.) Rip Van further alleges that it relied to its detriment on Safeco’s indication that it would be covered under the policy by continually paying the policy premiums and refraining from seeking coverage elsewhere. (See ECF No. 14 at ¶ 17.)

Assuming these facts to be true, the Court concludes that Rip Van has alleged facts sufficient to state a claim for equitable estoppel.

## **6. Respondeat Superior**

Finally, Safeco argues that Nevada law does not allow for negligence claims against insurers under a theory of respondeat superior.

The Court holds that Nevada law likely does allow such claims for two reasons. First, California law, which the Nevada Supreme Court looks to for guidance, states that an insurer may be vicariously liable for the tortious actions of its agent when the insurer authorized or directed the agent to perform those actions. *Desai v. Farmers Ins. Exchange*, 47 Cal. App. 4th 1110, 1118 (Cal. App. 1996); *Leigh-Pink v. Rio Properties, LLC*, 989 F.3d 735, 737 (9th Cir. 2021) (“where Nevada law is lacking, its courts have looked to the law of other jurisdictions, particularly California, for guidance”). Second, the Nevada Supreme Court has held that the agency relationship of an insurer and its agent can be relevant to the question of whether the agent’s actions can be ascribed to the insurer under

1 a theory of mutual mistake. *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 839  
2 P.2d 599, 603 (Nev. 1992).

3 The Court further holds that Rip Van has sufficiently pled its claim for  
4 respondeat superior, since it alleges that Legacy and Payne were agents of Safeco,  
5 that they committed wrongful acts in the course of their employment and under  
6 control of Safeco, and that Safeco knew of their wrongful behavior. (ECF No. 14  
7 at ¶¶ 10, 16, 90); *Molino v. Asher*, 618 P.2d 878, 880 (Nev. 1980).

8 The Court has considered Safeco's other arguments and finds they are  
9 without merit.

10 **IV. CONCLUSION**

11 It is therefore ordered that Safeco's motion for judgment on the pleadings  
12 (ECF No. 27) is granted in part and denied in part, in keeping with this order.

13  
14 Dated this 22<sup>nd</sup> day of August 2024.

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18 ANNE R. TRAUM  
19 UNITED STATES DISTRICT JUDGE  
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